

IN THE MATTER OF a Board of Inquiry  
appointed pursuant to s.38(1) of the  
Human Rights Code, R.S.O. 1990, c.H.19

BETWEEN

MARTIN ENTROP

Complainant

- and -

IMPERIAL OIL LIMITED

Respondent

Date of Complaint: 16 January 1992

Date of Decision: 21 October, 1994

Board of Inquiry: Professor Constance Backhouse

Counsel: Counsel for the Commission -	Mark Hart Vandana Taxali
Counsel for the Complainant -	Jeffrey M. Andrew Elizabeth Nurse
Counsel for the Respondent -	Colin Campbell Q.C.

INTERIM DECISION #3

Counsel for the parties have sought several additional preliminary rulings in this case.

1. Issues Relating to Reinstatement

Mr. Hart has requested a ruling to clarify the scope of the hearing on matters dealing with reinstatement. Mr. Entrop's complaint alleges that he was initially removed from his position pursuant to the Respondent's "Alcohol and Drug Policy," a removal he claims was contrary to the Human Rights Code. In addition to evidence relating to Mr. Entrop's removal from his position, the Commission wishes to introduce documents and evidence relating to Mr. Entrop's reinstatement to the position of senior operator at Imperial Oil. Mr. Hart stated that he sought to introduce evidence relating to Mr. Entrop's reinstatement, the process of obtaining reinstatement, the terms upon which reinstatement was granted, and the ongoing implementation of these terms. Mr. Hart claimed that this process of reinstatement also violates the Code.

Mr. Hart conceded that the original complaint, dated 16 January 1992, did not contain any allegations about reinstatement. However, he argued that there was no necessity to amend the complaint, and that evidence pursuant to reinstatement could be introduced under the terms of the original complaint. Mr. Hart explained that at the time the complaint was issued,

Imperial Oil's "Alcohol and Drug Policy" contained no provisions regarding reinstatement. It was not until February of 1992 that Imperial Oil revised its "Alcohol and Drug Policy" to provide for reinstatement subject to certain requirements. Mr. Entrop apparently sought and obtained reinstatement under the terms of this Policy, but wishes to include the reinstatement process as part of his complaint. Mr. Hart's position was that it was unnecessary to amend the complaint, since the issue of reinstatement flowed naturally from the original allegations of job loss.

I agree with Mr. Hart's position. There will always be some delay between the filing of a complaint and the hearing of the matter before a board of inquiry. Where the parties to the case remain in a continuing relationship, events will continue to unfold. The questions concerning the process of reinstatement fall squarely within the original ground of employment discrimination alleged by the Complainant. The information sought to be adduced is in the nature of a "continuum" of the matters raised in the first instance. The issue of reinstatement is not severable from the issue of job loss. The evidence simply relates to a single issue over a continuing time. There is no need to obtain an amendment to the complaint on these issues.

The board of inquiry must be careful, however, to ensure that proper notice has been provided to the Respondent concerning the Commission's intention to argue matters relating to reinstatement. The requirements of fairness and natural justice

entail notice and an opportunity to respond: Barnard v. Fort Frances Board of Police Commissioners, (1986) 7 C.H.R.R. D/3167 at D/3174. In this case, there is no conceivable prejudice to the Respondent. Throughout the investigation, conciliation and mediation of this case, the Respondent has been on notice that the Commission intends to introduce evidence concerning the reinstatement process. The human rights officer's report, issued on 9 October 1992, framed the complaint to include reinstatement issues, and informed the Respondent that the Commission did not view the reinstatement provisions as reasonable accommodation under the Code. Correspondence from the Respondent replying to the report, dated 29 October 1992, disagreed with the Commission's assessment of reinstatement, and squarely joined issue on this very matter. The requirements of fairness and natural justice relating to notice and opportunity to respond have all been met in this instance.

## 2. Issues of Reprisal

Mr. Hart also sought a ruling to permit the Commission to introduce evidence regarding reprisals. He argued that Mr. Entrop had experienced a series of reprisals flowing out of his decision to file a human rights complaint against the Respondent, and placed detailed particulars before this board. Mr. Hart sought to have these matters included within the scope of the original complaint, or in the alternative to obtain an amendment to the complaint alleging a violation of the reprisal provision,



in section 8 of the Code.

In my view, these allegations necessitate an amendment to the original complaint. Although the facts alleged would appear to be integrally related to the original complaint of employment discrimination, the Commission intends to argue violation of a separate section of the Code, the reprisal provision in s.8, and this section should be specifically listed in the complaint.

Cousens v. Canadian Nurses Association, (1981) 2 C.H.R.R. D/365 outlines the powers of boards of inquiry to amend the complaints before them, and notes that the wording of the Code is:

sufficiently broad to bear the practical interpretation that a board of inquiry has jurisdiction to amend the alleged grounds of contravention specified in a complaint. Surely, it was not intended that the Minister of Labour should have to make an additional appointment simply because, in preparation for the hearing, another possible ground of contravention has become apparent. It is clearly in the interests of all of the parties and the citizens of Ontario that the substantial complaint be dealt with at one hearing taking into account all of the possible ways in which any party may have "contravened this Act."

See also Tabar v. Lee, (1982) 3 C.H.R.R. D/1073 at D/1084-5; Barnard v. Fort Frances (supra) at D/3172-3; Pattison v. Fort Frances (Town) Commissioners of Police, (1987) 8 C.H.R.R. D/3884 at D/3885.

Where allegations of reprisals for filing an original complaint are sought to be added to the original grounds of the complaint, this logic seems even more forceful. It would be impractical, inefficient and unfair to require individuals to make allegations of reprisals only through the format of separate

proceedings. This would necessitate their going to the end of the queue to obtain investigation, conciliation and adjudication on matters which are fundamentally related to proceedings already underway. Insofar as reprisals are intended to intimidate or coerce complainants from seeking to enforce their rights under the Code, this would thwart the integrity of the initial proceedings, and make a mockery of the Code's obvious intent to safeguard complainants from adverse consequences for claiming protection under the Code. The allegations of reprisals should be dealt with in the context of the original complaint, and I will grant the Commission's request for an amendment as requested.

The Respondent received its first notification of the allegations of reprisals on 2 October 1994. As Mr. Campbell, counsel for the Respondent, noted, the Respondent requires additional time to consider the allegations and prepare its response. As was stated in Cousens, at D/366:

[T]he jurisdiction to modify the alleged grounds of discrimination carries with it the obligation of providing adequate notice. Failure to provide sufficient notice to the parties and, where appropriate, the opportunity to adjourn for further preparation could result in a board of inquiry depriving itself of jurisdiction by failing to provide a fair hearing as required by section 8 of the Statutory Powers Procedure Act S.O. 1971, c.47, which provides:

8. Where the good character, propriety of conduct or competence of a party is an issue in any proceedings, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

Mr. Hart conceded that the Respondent would require additional

time to prepare its case on these issues, and all parties agreed to leave the calling of evidence on reprisals until a later stage in the hearing. The scheduled dates for this hearing are not continuous, and at the present time, it would appear that the Respondent has several months, at least, to prepare its defence on reprisals. This would appear to be more than ample notice to comply with the requirements of natural justice.

### 3. Allegations Regarding s.13 of the Code

Mr. Andrew, counsel for the Complainant and the Canadian Civil Liberties Association, sought to add an additional ground to the complaint. Mr. Andrew requested that this board also consider allegations of a violation of s.13 of the Code, in that the Respondent had published or displayed before the public an intention to discriminate on the basis of handicap. Mr. Andrew based this argument on certain terminology present in the random testing provisions of the Respondent's "Alcohol and Drug Policy." Mr. Campbell opposed the request, and argued that the facts raised by Mr. Entrop's individual complaint did not justify the introduction of evidence based on s.13.

Pursuant to my earlier preliminary ruling in this case, Entrop v. Imperial Oil (interim decision #2), dated 27 September 1994, this hearing will proceed by way of a "phased" approach. Until the full nature of Mr. Entrop's individual situation becomes apparent, I cannot make an informed ruling on Mr. Andrew's request. Consequently, I prefer to defer my decision on

this matter until a later stage in the hearing.

October 21, 1994

Date \_\_\_\_\_

Chubbins

Constance Backhouse  
Chair, Board of Inquiry